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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,700	12/20/2001	Mark Skiba	47612/LTR/G319	4165
23363	7590	10/19/2004	EXAMINER	
CHRISTIE, PARKER & HALE, LLP			THAI, TUAN V	
PO BOX 7068			ART UNIT	
PASADENA, CA 91109-7068			PAPER NUMBER	
			2186	

DATE MAILED: 10/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/027,700

Applicant(s)

MARK SKIBA ET AL.

Examiner

Tuan V. Thai

Art Unit

2186

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-13 is/are pending in the application.
- 4a) Of the above claim(s) 1-8 and 14-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 January 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>8/16/04</u> . | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 2186

Part III DETAILED ACTION

Response to Amendment

1. This office action is in response to Applicant's communication filed August 13, 2004. This amendment has been entered and carefully considered. Claims 9-13 remain pending in the application. Claims 1-8 and 14-19 have been canceled.

2. Applicant's arguments with respect to claims 9-13 have been considered but are not deemed to be persuasive.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

- (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the

Art Unit: 2186

English language.

4. Claims 9-13 are rejected under 35 U.S.C. § 102(e) as being anticipated by Uemura et al. (USPN: 5,720,026); hereinafter Uemura.

As per claim 9; Uemura discloses the invention as claimed including a method for backing up data stored in files as the data is updated, comprising the following conventionally steps known as incremental backup (e.g. see abstract): updating one of the files, temporarily storing a copy of the updated file, comparing the copy of the updated file the file prior to updating, storing the differences in the copy of the updated file, and repeating the above steps each time when one of the files is updated (e.g. see column 1, lines 46-49; column 2, line 25 bridging column 3, line 3);

As per claims 10 and 13, the further limitations of restoring concept wherein temporarily storing a copy of the current version of the file being restored, applying the stored difference to the stored copy of the current version to produce a copy of an earlier version of the data/file being restored (by the difference management mechanism 203 detailed below), and repeated the steps until a desired version of data/file is produced are taught by Uemura; for example, starting at column 10, lines 8-13; Uemura teaches to restore the incremental backup

Art Unit: 2186

data, the incremental backup data which is temporarily saved via the pseudo device driver interface can be written into the pseudo device driver interface in sequence for the backup volume (or data file) where data to the generations preceding the incremental backup is already restored (e.g. see column 10, lines 8-13), Uemura further discloses when the incremental backup data is restored, or when the difference map information 600 and block data gotten as the incremental backup data are written into the pseudo device driver (which can be used from a file system for file restoring; e.g. column 6, lines 23-24), the difference management mechanism 203 restores the block data (or file data) to the disk unit or the logical disk unit where the backup in the generation to reproduce the difference data is complete based on the received difference map information 600 (e.g. see column 6, lines 36 et seq). By this rationale, claims 10 and 13 are rejected.

As per claims 11 and 12; the further limitation of the temporarily stored copy is stored until the next time one of the files is updated is embedded in the incremental backup operation that is taught by Uemura, since (a) it is well-known and notorious old that in the incremental backup operation, only the difference data updated since the most recent backup is being backed up without backing the entire data, and (b) Uemura clearly teach that whenever incremental backup is performed, data

Art Unit: 2186

indicating whether or not blocks have been updated is registered/stored in the difference map information 600 **over** backup generations, update data is temporarily stored/registered until the next update (e.g. see column 5, lines 21-36). By this rationale, claims 11 and 12 are rejected.

5. As per remark (amendment dated April 28, 2004), Examiner would like to emphasize that the concept of "updating, temporary storing, comparing, and storing the differences each time one of the files is updated" as being contended by Applicant's counsel is equivalently taught by Uemura as the INCREMENTAL BACKUP wherein only the difference of data file is backed-up from the previous update/backup (e.g. see abstract, column 1, lines 46-49; column 2, line 25 bridging column 3, line 3).

6. Applicant's arguments filed August 13, 2004 have been fully considered but they are not deemed to be persuasive.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

Art Unit: 2186

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan V. Thai whose telephone number is (703) 305-3842. The examiner can normally be reached on from 6:30 A.M. to 4:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mathew M. Kim can be reached on (703)-305-3821. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be

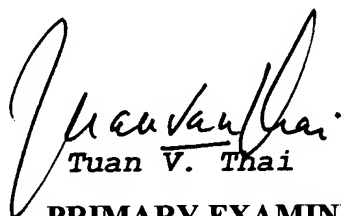
Application/Control Number: 10/027,700

-Page 7-

Art Unit: 2186

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TVT/October 14, 2004

A handwritten signature in black ink, appearing to read 'Tuan V. Thai', is positioned above the printed name.

Tuan V. Thai

PRIMARY EXAMINER

Group 2100